

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

JAIRO HERNANDEZ,

Defendant.

Case No. [14-cr-00120-EMC-6](#)

**ORDER DENYING CERTIFICATE OF  
APPEALABILITY**

Docket No. 1080

On June 3, 2019, the Court denied Petitioner Jairo Hernandez's 28 U.S.C. § 2255 motion to vacate his sentence, finding that he had failed to establish his counsel provided ineffective assistance in his criminal proceedings. *See* Docket No. 1077. Mr. Hernandez now requests a certificate of appealability from this Court pursuant to 28 U.S.C. § 2253(c). *See* Docket No. 1080. A court shall grant a certificate of appealability "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). Where, as here, "a district court has rejected the [applicant's] constitutional claims on the merits, the showing required to satisfy § 2253(c) is straightforward: [t]he petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Mr. Hernandez has not made such a showing. As discussed in the June 3, 2019 order, Mr. Hernandez's claims that his counsel failed to (1) provide him with discovery about his case, (2) inform him about the interstate commerce element of his RICO charge, and (3) present mitigating evidence at sentencing, are clearly belied by the record. *See* Docket No. 1077 at 3–9.


Accordingly, the request for a certificate of appealability is **DENIED**. The Clerk shall forward this order, the June 3, 2019 order, and the case file to the Ninth Circuit, from which Mr.

Hernandez may also seek a certificate of appealability. *See United States v. Asrar*, 116 F.3d 1268, 1270 (9th Cir. 1997).

This order disposes of Docket No. 1080.

**IT IS SO ORDERED.**

Dated: July 9, 2019

  
EDWARD M. CHEN  
United States District Judge